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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

ANA LUGO,

Plaintiff,

v.

HIGHLINE SCHOOL DISTRICT,

Defendant.

NO. _____

COMPLAINT FOR VIOLATIONS OF
USERRA, DEMAND FOR DAMAGES,
AND TRIAL BY JURY

**EXEMPT FROM FILING FEES
UNDER 38 U.S.C. § 4323(h)(1)**

COMES NOW Plaintiff, Ana Lugo, through his attorneys, and alleges as follows:

I. PARTIES AND JURISDICTION

1.1 Plaintiff, Ana Lugo, worked within the Western District of Washington at all times pertinent hereto.

1.2 Defendant Highline School District is a local government entity located in Burien, Washington.

1.3 All acts complained of occurred in the Western District of Washington.

1.4 The Federal Court for the Western District of Washington has jurisdiction over this matter under 38 U.S.C. § 4323(b)(1)-(3) and 28 U.S.C. § 1331.

II. FACTS

2.9 Before the school year begins New Start held administrative meetings.

1 2.10 One such meeting took place in August of 2016. Mr. Sita summoned Ms. Lugo
2 into a small room. Ms. Lugo felt somewhat claustrophobic. Both Mr. Sita and Ms. Lugo
3 remained standing.

4 2.11 Mr. Sita began that meeting by interrogating Ms. Lugo about her priorities and
5 commitments, stating in part “Ana, I want to talk to you about your military service and what
6 you’re doing here.”

7 2.12 Mr. Sita continued his interrogation by admonishing Ms. Lugo with questions
8 including, “where is your heart at? Where is your loyalty? Where do you want to be: here or the
9 Navy?”

10 2.13 Ms. Lugo replied “both places. In each place I influence young lives and I feel I
11 can make a difference in both places.”

12 2.14 Mr. Sita continued his admonishment, saying “well, only one of these is your
13 fulltime job and it isn’t the Navy. This is your bread and butter. This is what pays your bills.”

14 2.15 Mr. Sita’s admonishments made Ms. Lugo feel that her job was in jeopardy.

15 2.16 In the June 2017 timeframe, Ms. Lugo told Mr. Sita, via email, that Ms. Lugo was
16 being activated for the Navy at the end of July.

17 2.17 Mr. Sita curtly responded to Ms. Lugo and told her to send her order to Human
18 Resources (HR).

19 2.18 Although not required to do so under USERRA, Ms. Lugo forwarded her
20 mobilization orders to HR.

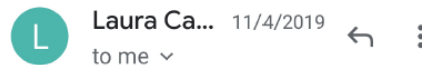
21 2.19 Ms. Lugo’s mobilization orders were originally for 330 days.

22 2.20 Later, the Navy amended those orders and extended Ms. Lugo’s military duty
23 through the January 31, 2020 timeframe.

2.21 Ms. Lugo served in Qatar, the UAE, Bahrain, and Virginia from July 2017 to January 2020.

2.22 In the July 2019 timeframe, Ms. Lugo called and emailed Laura Castaneda (HR) to tell Ms. Castaneda that her military orders had been extended. Ms. Castaneda told Ms. Lugo to contact Christine McGarr (HR). Ms. Lugo called Ms. McGarr who told Ms. Lugo that she had been terminated in June (2019) for failing to maintain her teaching certificate.

2.23 On November 4, 2019, Ms. Castaneda confirmed the July 2019 conversation via test to Ms. Lugo:

 Laura Ca... 11/4/2019
to me ▾

Hi Ana.

I was forwarded the email you sent Candy and I'm very sorry to hear what you're going through.

On June 11, 2019 we sent you a letter to your home address letting you know that your employment with the district was thereby terminated for breach of contract and failure to maintain a valid WA state teaching certificate. The letter was sent via certified mail and we received confirmation that it was received and signed for.

Again, I'm very sorry to hear what you're going through.

Laura Castaneda
Leaves and Guest Employee Services
Lead
Human Resources
P: (206) 631-3125

2.24 Ms. Lugo's military orders ended on January 30, 2020, whereupon she was honorably discharged.

1 2.25 On or about February 7, 2020, Ms. Lugo went to the Highline School District
2 headquarters to let the District know she had returned from military duty and gave notice of her
3 intent to return to work.

4 2.26 On or about February 13, 2020, Ms. Lugo again traveled to District HR and asked
5 to talk to HR. The receptionist told Ms. Lugo that HR was busy. Ms. Lugo left a message for Ms.
6 Castaneda to call Ms. Lugo.

7 2.27 Shortly thereafter, Ms. Castaneda called Ms. Lugo back and told Ms. Lugo that if
8 she wanted to work at the District “she’d have to apply for another job opening.” Ms. Lugo asked
9 to talk to the HR Director so as to explain the situation to which Ms. Castaneda said words to the
10 effect of “it’s gonna be a waste of time because she’s going to tell you the same thing.” Ms. Lugo
11 nevertheless called the director and left voicemail but Highline never called her back.

12 2.28 Ms. Lugo again called Ms. Castaneda to ask to speak with the HR Director. In
13 response to that request Ms. Castaneda said words to the effect of “Christina is not going to call
14 you back. If you want to work here, you’ll have to apply for an open position.”

15 2.29 Upon information and belief, Defendants hired new teachers in 2020.

16 2.30 Defendants did not reemploy Ms. Lugo.

17 2.31 After terminating Ms. Lugo, and refusing to reemploy her, Defendants did not
18 offer Ms. Lugo any training or accommodations to become qualified for employment.

19 2.32 Ms. Lugo then tried to resolve the issue through the Employer Support for Guard
20 and Reserve (ESGR), an agency whose job it is to resolve issues like this between employers and
21 military reserve employees.

22 2.33 The ESGR contacted Defendant but Defendant refused to resolve the issue.
23
24

2.34 Ms. Lugo then filed a complaint with the Department of Labor, Veterans Employment and Training Service (DOL/VETS).

2.35 DOL/VETS conducted an investigation of Ms. Lugo's USERRA reemployment rights and determined that the District violated USERRA by failing to reemploy Ms. Lugo.

2.36 The District then offered to reemploy Ms. Lugo, but only if, Ms. Lugo agreed to waive her USERRA rights and not to sue Defendants.

2.37 To the extent that Defendant alleges application of any agreement that constitutes any limitation on Plaintiff's rights under USERRA, it is illegal, null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.

2.38 Upon information and belief, Defendant maintained workplace posters that set out employer responsibilities under USERRA as required by 38 U.S.C. § 4334.

III. CAUSES OF ACTION

CAUSE OF ACTION NO. 1 - VIOLATION OF 38 U.S.C. § 4312-4313

3.1 In order to enjoy USERRA's reemployment protections, a plaintiff must: (a) be a member of the Armed Forces of the United States; (b) give notice to his employer of the plaintiff's military obligations; (c) serve honorably during the military service period; (d) give timely notification, to the employer, of plaintiff's intent to return to work; and, (e) serve less than five years with the military (absent varied exceptions). 38 U.S.C. § 4312.

3.2 Ms. Lugo is a member of the Navy Reserves.

3.3 Ms. Lugo gave notice to Defendant of her military mobilization that began on July 28, 2017.

3.4 Ms. Lugo served honorably during the above-referenced military service obligation.

1 3.5 Ms. Lugo timely and repeatedly applied for reemployment within 90 days of her
2 military service ending.

3 3.6 Upon returning to work Defendant was obligated to reemploy Ms. Lugo in the
4 following “order of priority”: (1) the position that the employee would have attained with
5 reasonable certainty if not for the employee’s absence due to military service (“the escalator
6 position”); (2) the position that the employee was employed on the date that the period of service
7 began (“the pre-service position”); or (3) if the employee is not qualified for (1) or (2) above, any
8 other position that is the nearest approximation first to (1) and then to (2) (“the nearest-
9 approximation position”). 38 U.S.C. § 4313(a)(1)(A)-(B) & (a)(4); 20 C.F.R. § 1002.191; 20
10 C.F.R. § 1002.196(a)-(c).

11 3.7 Defendant did not reemploy Ms. Lugo in the position she occupied before going
12 on her military duty.

13 3.8 Defendant did not offer Ms. Lugo a position comparable to her pre-deployment
14 job upon her return from military duty.

15 3.9 Defendant did not offer Ms. Lugo a position that was approximate to her pre-
16 deployment job upon her return from military duty.

17 3.10 Defendant’s failure to follow USERRA’s reemployment statutes and regulations
18 have caused Ms. Lugo damage in an amount to be proven at trial.

19 **CAUSE OF ACTION NO. 2 – VIOLATION OF RCW 49.60.180**

20 3.11 The Washington Law Against Discrimination (WLAD), RCW 49.60.180, makes
21 it an unlawful practice for an employee to discriminate against an employer on account of the
22 employee’s military or veteran status.

1 3.12 Defendant also violated the WLAD by failing to re-employ Ms. Lugo following
2 her service in the U.S. Navy Reserves.

3 3.13 Defendant's actions caused Ms. Lugo damages in an amount to be proven at trial.

4 **CLAIM FOR LIQUIDATED DAMAGES**

5 3.14 The Defendant absolutely knew that its conduct was prohibited under the
6 provisions of USERRA, and its conduct was willful as defined by 38 U.S.C. § 4323(d), 20 C.F.R.
7 § 1002.312(c), because Plaintiff's immediate supervisor, Mr. Sita, previously served in the U.S.
8 Navy in an active duty and reserve capacity. Mr. Sita's biography states that he retired from the
9 Navy Reserves in 2006. The word "retired" carries weight in the context of this USERRA case as
10 a high ranking retired reservist like Mr. Sita knew or should have known that its intended actions
11 violated the law and the Defendant carried out said illegal conduct with knowledge and
12 responsibility.

13 3.15 To the extent that any contract, agreement, collective bargaining agreement, policy
14 or practice of the Defendant constitutes any limitation on Ms. Lugo's rights under USERRA (such
15 as the requirement that Ms. Lugo maintain her teaching certificate while deployed and that her
16 failure to do so justified Defendant's actions in firing her) it is illegal, null and void, inapplicable
17 and of no force or effect pursuant to 38 U.S.C. § 4302.

18 **IV. PRAYER FOR RELIEF**

19 4.1 Plaintiff respectfully demands a jury trial as to her USERRA and her state law
20 claim and further to be awarded compensation for all injury and damage suffered. To wit:

- 21 a. both economic and non-economic damages in the amount to be
22 proven at trial including back pay, front pay, lost benefits of employment, negative
23 tax consequences of any award;
24

b. liquidated damages and general damages; and,

c. reasonable attorney and expert fees, and costs, pursuant to 38 U.S.C.

§ 4323 and as otherwise provided by law.

4.2 Under USERRA, a court may order equitable remedies, including reinstatement and recoupment of any loss of wages or benefits. 38 U.S.C. § 4323(d)(1)(A, B).

4.3 USERRA also empowers a court to use “its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits” of the service member. *Id.* § 4323(e). A court may award the prevailing party reasonable attorneys’ fees, expert witness fees, and other litigation expenses. *Id.* § 4323(h)(2).

4.4 Based on the violations discussed previously, Plaintiff asks the Court for the following:

a. Declare that Defendant's failure to reemploy Ms. Lugo violated USERRA, 38 U.S.C. §§ 4312-4313;

b. Declare that Defendant’s violations of USERRA were willful pursuant to, 38 U.S.C. § 4323(d)(1)(C);

c. Award plaintiff general damages.

d. Order such other relief as may be just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 or any similar rule of law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by jury is available.

1 DATED this February 5, 2021.

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